

May 24, 2011

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

In re:

ALBERT DENNIS ZAMPEDRI,

Movant.

No. 11-4081
(D.C. No. 2:10-CV-1272-DAK)
(D. Utah)

ORDER

Before **BRISCOE**, Chief Judge, **MURPHY** and **O'BRIEN**, Circuit Judges.

Movant Albert Dennis Zampedri, a Utah state prisoner proceeding pro se, requests authorization to file a second or successive 28 U.S.C. § 2254 petition challenging his 2002 conviction for attempted aggravated murder and attempted murder. Because Mr. Zampedri has not demonstrated that his proposed claims meet the requisite conditions under 28 U.S.C. § 2244(b), we deny authorization.

Mr. Zampedri filed his first § 2254 petition challenging his conviction in 2005, which the district court denied. *See Zampedri v. Utah*, 219 F. App'x 803, 804-05 (10th Cir. 2007) (denying him a certificate of appealability). Before a state prisoner may file a second or successive § 2254 petition, the prisoner must first “move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). In 2009, Mr. Zampedri sought authorization to file a second or successive § 2254 petition.

We denied authorization, noting that he was seeking to present the identical claims he had presented in his first § 2254 petition. *In re Zampedri*, No. 09-4035, slip op. at 2-3 (10th Cir. Apr. 3, 2009) (unpublished order) (listing his claims as including ineffective assistance of counsel; witness tampering; missing evidence; drug-addicted cop; perjury; C.S.I. tampering with crime scene; and conspiracy between counsel and judge).

A movant seeking to bring a second or successive § 2254 petition may proceed only with a claim not presented in a prior petition, *see* 28 U.S.C. § 2244(b)(1), that either “relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable,” *id.* § 2244(b)(2)(A), or relies on facts that “could not have been discovered previously through the exercise of due diligence” and that “would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense” *id.* § 2244(b)(2)(B)(i) & (ii).

In his current motion for authorization, Mr. Zampedri again seeks to present the same claims he raised in his first § 2254 petition and sought to reassert in his last motion for authorization. He again claims that his counsel failed to timely present evidence of actual innocence, to call witnesses and to assert witness tampering and that the police detective “handl[ed] evidence with evidence missing, allowed in judge’s chamber, then used as a witness against

petitioner, witness tampering, drug addict since 1995.” Mot. at 6. Mr. Zampedri concedes that he has raised these claims before, but argues they are based on new evidence because the court has refused to hear them due to procedural error. His assertion does not satisfy the newly-discovered evidence requirement of § 2244(b).

In any event, we may not grant authorization because Mr. Zampedri seeks to present the same claims he already presented in his prior unsuccessful § 2254 petition. “[A]ny claim that has already been adjudicated in a previous petition must be dismissed.” *Gonzalez v. Crosby*, 545 U.S. 524, 529-30 (2005) (citing § 2244(b)(1)).

Accordingly, the motion for authorization is DENIED. We WARN Mr. Zampedri that future frivolous collateral attacks on his conviction may subject him to sanctions. This denial of authorization is not appealable and “shall not be the subject of a petition for rehearing or for a writ of certiorari.” 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish line.

ELISABETH A. SHUMAKER, Clerk